IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1844 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MINOR SABABIBI ABDULMAJID - Appellant(s)
Versus
MOHMADBHAI UMARBHAI & ORS. - Respondent(s)

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Appearance :
Shri K. H. Baxi for Appellant(s).
Respondent No.1 is deleted.
None for Respondent No. 2 though name of Shri K.F. Dalal appears.
Ms. Hina Desai for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/07/2007

ORAL JUDGMENT

The appellant-claimant, being aggrieved by the award dated

30th March, 1994 passed by the learned Member, Motor Accident Claims Tribunal No.3, Ahmedabad in M.A.C.P. No.226 of 1981, is before this Court with a submission that the learned Tribunal below erred in confining the award to Rs.25,000/- only, while looking to the nature of the injuries suffered by the claimant, the entire amount of Rs.50,000/- should have been awarded.

2. Ms. Hina Desai, learned Counsel for respondent No.3-Insurance Company, submitted that the amount awarded is reasonable and does not call for any enhancement.

3. In paragraph 12 of the judgement, the learned Tribunal below has narrated the nature of injuries and evidence of the doctor. The learned Member has recorded that a young minor girl of 4 years had suffered fracture on left thigh and as an after-effect of the fracture, her movements were restricted and external rotations were restricted to 45° and internal rotations were restricted to 70°. The learned Tribunal also found that there was a disfiguring scar of 18" x 10" with certain formation on the left thigh in the middle 1/3rd area. The learned Tribunal also found that she was suffering with limping when walking and was finding difficult in squatting and sitting cross-legged. The learned Tribunal also found that she had suffered permanent partial disability of the left thigh hip region to 10%. The learned Tribunal also

found that the minor had suffered a contused lacerated wound of 5" x 2" x 1" on the right groin, extending into right labia majora. The learned Tribunal also found that the doctor opined that it was difficult to equate this in functional loss because of the tender age, but, it was certain from external examination that she had suffered permanent partial disability to the extent of 15%. The learned Tribunal also found that she was likely to soil her clothes and she was suffering pain while urinating. The learned Tribunal also found that even after growth in the age, the scar would not be clear and the injury to the vagina would not disappear. Despite finding all this, the learned Tribunal has awarded only a sum of Rs.15,000/- towards pain, shock, suffering, future enjoyment and amenities of life. Under this head, the appellant, in the opinion of this Court, can safely be awarded a sum of Rs.40,000/-, i.e. Rs.25,000/- in addition to what has been awarded by the learned Tribunal below.

4. In paragraph 13, the learned Tribunal below has referred to a judgement in the matter of ***Sureshbabu vs. Janardan Chhaganlal Chokhawala***, [***22 G.L.R. 585***], and has observed that in case of permanent partial disability of 25% to a minor boy, future loss has to be estimated at Rs.125/- per month. However, in case of the minor girl, the learned lower Court held that the future loss of income would be Rs.50/- only.

5. In the opinion of this Court, if the judgement in the matter of ***Sureshbabu vs. Janardan Chhaganlal Chokhawala*** (*supra*) was to be followed, then, in case of a minor of 4 years, the loss of future income should have been assessed at Rs.150/- per month, i.e. Rs.100/- per month in addition to what had been awarded by the learned Tribunal below. The additional yearly loss of income would Rs.1,200/- and applying the multiplier of fifteen, the total future loss would run into Rs.27,000/-. In the opinion of this Court, in addition to what has been awarded to the claimant, she would be entitled to a sum of Rs.52,000/-, but, as the appellant has confined her claim to Rs.25,000/- only, I grant the appeal and award Rs.25,000/- in addition to what has been awarded by the learned Tribunal below. The claimant would be entitled to 9% interest per annum from the date of the claim petition till the date of realisation on this additional amount of Rs.25,000/-. The respondent would be severally and jointly liable to pay the amount to the appellant.

[R.S.Garg, J.]

*kamlesh**